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20 ART.COM, INC.

21
22 **UNITED STATES DISTRICT COURT**
23
24 **NORTHERN DISTRICT OF CALIFORNIA**

25 GOTHAM CITY ONLINE, LLC, a Delaware
26 limited liability company,

27 Plaintiff,

28 v.

ART.COM, INC., a Delaware corporation, and
Does 1-50,

Defendant.

Case No. 3:14-cv-00991-JSW

**STIPULATION AND [PROPOSED]
ORDER REGARDING
PRESERVATION, REVIEW AND
PRODUCTION OF CERTAIN
ELECTRONICALLY STORED
INFORMATION**

1 WHEREAS, this Court ruled on March 26, 2014 that certain Electronically Stored
2 Information (ESI) currently maintained by Evolve Discovery should not be accessed by Evolve
3 Discovery or any other party pending further order of the Court;

4 WHEREAS, subject to the approval of the Court, the Parties have agreed to a protocol for
5 determining whether the ESI contains privileged, confidential, proprietary or personal
6 information of either party and for the return of such information to the proper party;

7 WHEREAS, nothing in this ESI protocol or the Parties' stipulation, including but not
8 limited to Evolve's or any other mutually agreed-to third party vendor's continued possession of
9 ESI, shall be considered a waiver of any claim to privilege, confidentiality, ownership or privacy
10 of any ESI;

11 WHEREAS, this ESI protocol is intended by the Parties to be a first effort at resolving
12 any issues regarding the character and/ownership of the data or materials in the ESI held by
13 Evolve, and nothing in this ESI protocol or stipulation is intended or shall be construed to
14 prevent additional procedures or protocols from being adopted by the Parties or ordered by the
15 Court should either of the Parties hereto determine or believe that the procedure described in this
16 stipulation be inadequate for any purpose.

17 NOW THEREFORE, the Parties stipulate as follows:

- 18 1. Evolve Discovery, or another third party vendor as mutually-agreed upon by the
19 Parties, shall produce an index of the ESI;
- 20 2. The index shall be limited to the following identifying information:
 - 21 a. Name
 - 22 b. File extension
 - 23 c. Description
 - 24 d. Date Created
 - 25 e. Date Last Accessed
 - 26 f. Date Last written
 - 27 g. Logical size
 - 28 h. File Identifier

- 1 i. Hash Value
- 2 j. Full Path
- 3 3. The Parties shall jointly review the index. The Parties shall identify any claimed
4 privileged, confidential, proprietary or personal ESI;
- 5 4. The Parties shall meet and confer in an effort to agree on the return of the ESI to
6 the proper party;
- 7 5. If the Parties are unable to agree to the return of the ESI (or any of it), Evolve or
8 any other third party vendor the Parties agree to shall maintain the ESI for which
9 return is unresolved, neither party (or its attorneys) shall have any access to such
10 ESI pending resolution of how and to whom the ESI is to be returned, and the
11 return of any such ESI shall be decided by the arbitrator(s) in the pending
12 proceeding captioned as: *Art.com v. Garriss, Topkins, and Hersh, and Gotham*
13 *City Online*, AAA Case No. 74 523 Y 120 14 AMCH;
- 14 6. Costs for administering the index shall be borne equally by the Parties.

15
16 DATED: April 24, 2014

KERR & WAGSTAFFE LLP

17
18 By /s/
19 IVO LABAR

20 Attorneys for Plaintiff
21 GOTHAM CITY ONLINE, LLC

22 DATED: April 24, 2014

**QUINN EMANUEL URQUHART &
SULLIVAN, LLP**

23
24 By /s/
25 CLAUDE M. STERN
26 EVETTE D. PENNYPACKER

27 Attorneys for Defendant
28 ART.COM, INC.

1 **[PROPOSED] ORDER**
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Pursuant to the Parties' stipulation, it is hereby ordered that:

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6 **IT IS SO ORDERED.**
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Dated: April 25, 2014


Honorable Jeffrey S. White